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Attorneys for Defendant

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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YEHUDAH KATZ,  
on behalf of himself and all  
others similarly situated,

Plaintiff,

v.

CAPITAL ONE BANK (USA), NA,

Defendant.  
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No. 12-CIV-1085

ECF Case

**DEFENDANT CAPITAL ONE  
BANK (USA), NA'S NOTICE OF  
MOTION AND MOTION FOR  
SUMMARY JUDGMENT**

TO PLAINTIFF AND HIS ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that Defendant Capital One Bank (USA), NA ("Capital One") will, and hereby does, move pursuant to Rule 56 of the Federal Rules of Civil Procedure, for summary judgment on the grounds that 1) Capital One is not an ATM operator and so is not a proper party to this suit, and 2) Plaintiff does not have standing to pursue a claim against Capital

One because he has not alleged an injury in fact, and Capital One has a complete defense to liability pursuant to 15 U.S.C. § 1693h(d).

This motion is based on this Notice of Motion and Motion for Summary Judgment; Memorandum of Points and Authorities in Support of Defendant Capital One Bank (USA), NA's Motion for Summary Judgment; Separate Statement of Undisputed Material Facts in Support of Defendant Capital One Bank (USA), NA's Motion for Summary Judgment; Affidavit of Stephanie Estes in Support of Defendant Capital One Bank (USA), NA's Motion for Summary Judgment, submitted herewith; Affidavit of Michael Robson in Support of Defendant Capital One Bank (USA), NA's Motion for Summary Judgment, submitted herewith; Affidavit of Juan Diaz in Support of Defendant Capital One Bank (USA), NA's Motion for Summary Judgment, submitted herewith; Affidavit of Kenneth Rogers in Support of Defendant Capital One Bank (USA), NA's Motion for Summary Judgment, submitted herewith; and all other pleadings and filings in this action and any such other evidence, authorities, and arguments as may be introduced at the hearing of this motion.

Dated: New York, New York  
July 5, 2012

By: /s/ Mark David McPherson

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